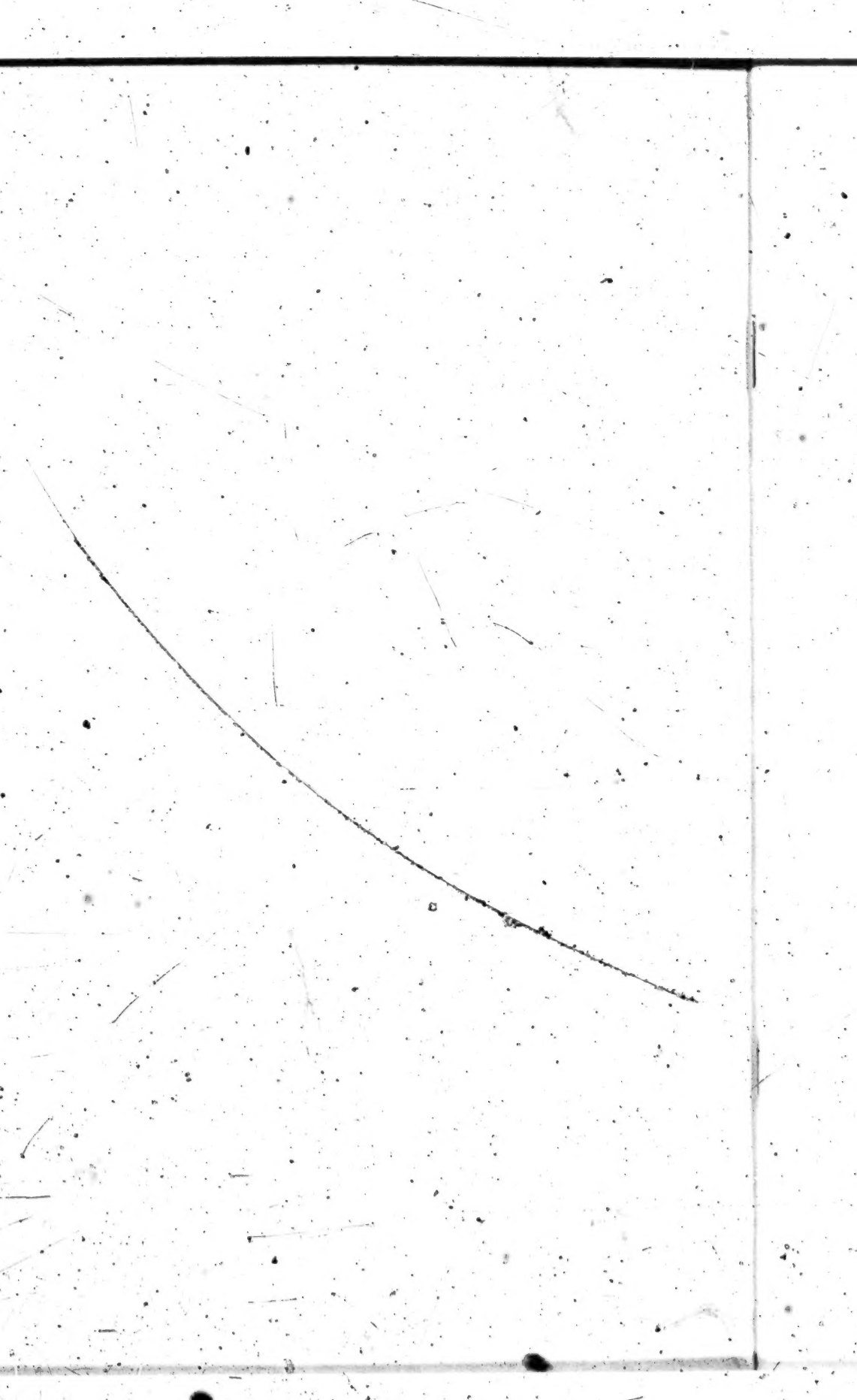

In the Supreme Court of the United States

OCTOBER TERM, 1971

Supreme Court, U.S.
FILED
MAR 1 1972
E. ROBERT SEAVER, CLERK

No. 71-452

CATHERINE J. HEALY, et al.,
Petitioners,

v.

F. DON JAMES, et al.,
Respondents.

Amicus Curiae Brief of the Board of Trustees, California State Colleges.

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SUBJECT INDEX

	Page
Interest of Amicus Curiae	1
Preliminary Statement	2
Summary of Argument	3
Argument	4
I. This Case Must Be Considered in Light of the Special Characteristics of the School Environment	4
II. The Courts Have Given College Administrators Broad Discretion to Manage Campus Affairs So As to Achieve the Educational Goals of the Institution	6
A. Use of College Facilities and Resources	6
B. Prevention of Disruptive Conduct	7
C. Prohibition of Fraternities	9
D. Parietal Rules	9
E. Rules Regulating the Conduct of Group Protests and Demonstrations	10
III. A College May Impose Reasonable Standards and Conditions Upon the Granting of Recognition to Student Organizations	10
IV. The Freedoms of Speech and Association Are Not Absolute but Are Subject to Reasonable Restrictions for the Protection of Legitimate Public Interests	13

Page

V. The Interest of Petitioners in Obtaining Official Recognition Must Be Balanced Against the Obligation of the State to Educate Its Students In an Orderly and Disciplined Manner 15

VI. The Rules and Policies Which the College Seeks to Enforce Are Reasonable 17

VII. It Is Not Unreasonable to Require That a Student Organization Seeking Recognition Fully Disclose Its Purposes and Plans 21

Conclusion 23

TABLE OF AUTHORITIES CITED

Cases	Pages
Adderley v. Florida, 385 U.S. 39 (1966)	17, 20
American Civil Liberties Union of Va. v. Radford College, 315 F. Supp. 893 (W.D.Va. 1970)	10, 11
Barker v. Hardway, 283 F. Supp. 228 (S.D.W.Va. 1968); affrm'd per curiam 399 F.2d 638 (1969) Cert. denied, 394 U.S. 905 (1969)	8
Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966)	6, 15
Commonwealth v. Stotland, 214 Pa. Super. 35 (1969) appeal dismissed 398 U.S. 916 (1970)	13, 15, 16
Cox v. Louisiana, 379 U.S. 536 (1965)	7, 17, 20, 21
Dickey v. Alabama State Board of Education, 273 F. Supp. 613 (M.D. Ala. 1967) Appeal dis. as moot, 402 F.2d 515 (5th Cir. 1968)	12
Dunbar v. Governing Board of Grossmont Junior College Dist., 275 Cal. App. 2d 14 (1969)	12
Esteban v. Central Missouri State College, 415 F.2d 1077 (8th Cir. 1969)	7
Estes v. Texas, 381 U.S. 532 (1965)	13, 20
Goldberg v. Regents of the University of California, 248 Cal. App. 2d 867 (1967)	5, 13, 16
Healy v. James, 445 F.2d 1122 (2d Cir. 1971)	2, 3, 21
Hughes v. Caddo Parish Sch. Board, 57 F. Supp. 508 (W.D.La. 1944); affirmed 323 U.S. 685 (1945)	9
Konigsberg v. State Bar of California, 366 U.S. 36 (1961)	16, 22
Law Students Research Council v. Wadmond, 401 U.S. 154 (1971)	23
Los Angeles Teachers Union v. Los Angeles City Bd. of Ed., 71 Cal. 2d 551 (1969)	13, 14

Pages

McConnell v. Anderson, 451 F.2d 193 (8th Cir. 1971) Petn. for cert. filed 40 U.S.L.W. 3369 (U.S. Jan. 31, 1972) (No. 978) 13

Moore v. Student Affairs Committee of Troy State Univ., 284 F. Supp. 725 (M.D.Ala. 1968) 10

National Strike Inform. Center v. Brandeis Univ. of Walton, Mass., 315 F. Supp. 928 (D.Mass. 1970) 7

Pratz v. Louisiana Polytechnic Inst., 316 F. Supp. 872 (W.D.La. 1970); affirmed 401 U.S. 1004 (1971) 9

Schwartz v. Schuker, 298 F. Supp. 238 (E.D.N.Y. 1969) 15, 16, 20

Scoville v. Board of Ed. of Joliet TP. H.S. Dist., 425 F.2d 10 (7th Cir. 1970); cert. denied 400 U.S. 826 (1970) 15

Sellers v. Regents of the Univ. of California, 432 F.2d 493 (9th Cir. 1970); cert. denied 401 U.S. 981 (1971) 6, 14, 17, 19, 20, 23

Sword v. Fox, 446 F.2d 1091 (4th Cir. 1971); cert. denied 40 U.S.L.W. 3279 (U.S. Dec. 14, 1971) (No. 453) 10

Tinker v. Des Moines Indep. Com. School Dist., 393 U.S. 503 (1969) 11, 12, 16, 19

Waugh v. Board of Trustees of the Univ. of Mississippi, 237 U.S. 589 (1915) 9

Webb v. State Univ. of New York, 125 F. Supp. 910 (N.D.N.Y. 1954); appeal dismissed 348 U.S. 685 (1945) 9

Zanders v. Louisiana State Board of Education, 281 F. Supp. 747 (W.D.La. 1968) 8

STATUTES

Pages

50 U.S.C. § 462(a) 14

ARTICLES

Campus Freedom and Order, 45 Denver L.J. 502 (1968) 5, 20

Governance of the University: Rules, Rights, and Responsibilities, 54 Calif. L. Rev. 27 (1966) 8 Note, 81 Harv. L. Rev., 1045, 1130-31 (1968) 4

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INTEREST OF AMICUS CURIAE

The Board of Trustees of the California State Colleges is the governing body of a system consisting of nineteen separate campuses located throughout the State of California, serving approximately 263,000 students and employing approximately 14,900 faculty.

California colleges and universities, including certain of the California State Colleges, have been the scene of some of the most severe and destructive of the outbreaks of violence and disruption which have occurred in recent years on

college campuses. With the experience of these events in mind, the Board of Trustees of the California State Colleges has a vital interest in any court decision which may have an effect upon the ability of college administrators to direct and control campus activities.[1]

PRELIMINARY STATEMENT

Petitioners, students of a state college and members of a "local chapter" of Students for a Democratic Society (SDS) seek an order compelling the president of their college to officially recognize the chapter as a campus student association. According to petitioners' brief (p. 2) official recognition would carry with it the right to use campus facilities for meetings and other activities and to seek financial support from student body funds. Presumably it also would carry the right to use the college's name on the organization's publications, letterhead, and/or publicity releases.

The president of the college declined to grant official recognition for reasons which are explained in a thoughtful and objective document which is reproduced in a footnote at page 1124 of the Court of Appeals' opinion.[2]

Briefly stated, the president's reasons primarily were concerned with the petitioners' failure to provide reasonable assurances that their organization would conform to policies which had been promulgated with the approval of students, faculty, and administration for the conduct of student activ-

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1. On January 25, 1972, the Board adopted the following resolution:

Amicus Curiae Participation—*Healy v. James* (RGPA 72-03) RESOLVED, By the Board of Trustees of the California State Colleges, that General Counsel take necessary action to file a brief *amicus curiae*, on behalf of the California State Colleges, in support of the respondents in the case of *Healy v. James*, now pending in the United States Supreme Court.

2. *Healy v. James*, 445 F.2d 1122 (2d Cir. 1971).

ities and associations. These policies are set forth in a document entitled "Statement on Rights, Freedoms and Responsibilities of Students" (appendix to the opinion of the Court of Appeals, *Healy v. James,* 445 F.2d 1122, 1132 (2d Cir. 1971).

Petitioners' statement of the "Question Presented" appears to assume the factual conclusion that petitioners want the court to reach. In the view of amicus curiae, the case directly involves the degree of discretion and autonomy which the law extends to those who are charged with the extraordinary responsibilities attendant to the successful operation of a modern-day college or university. The question presented, therefore, should be stated as follows:

> Whether the public interest in preserving the essential educational environment is sufficient to justify allowing a college administrator to withhold official recognition of a student organization for failure to furnish satisfactory assurances that the organization will conform to reasonable rules governing the conduct of student activities.

SUMMARY OF ARGUMENT

A basic flaw in petitioners' legal argument is the assumption that public colleges and universities are subject to the same degree of judicial control as are those conventional government agencies which exercise regulatory powers over the rights and property of individual citizens. This assumption cannot be sustained in light of the overwhelming judicial precedent.

Since higher education is committed to the principle that the truth will emerge from a free interchange of ideas, college and university administrators have the clear responsibility to take all reasonable and necessary measures not only to protect and promote free expression, but also to preserve an atmosphere which is conducive to intellectual pursuits.

Organizations which are dedicated, or which reasonably appear to be dedicated, to the notion that a minority is justified in imposing its will upon the majority by violent means, have an especially heavy burden when they seek to gain formal acceptance in the academic community. A college administrator would be derelict in his duty if he failed to require that the representatives of such an organization provide satisfactory assurance they would not misuse the benefits of official recognition to the detriment of the college community.

The administrative action which is challenged by the petitioners here was reasonable under the circumstances, was within the broad discretion of the college officials, and did not violate any First Amendment right of the petitioners.

ARGUMENT

I. This Case Must Be Considered in Light of the Special Characteristics of the School Environment

Petitioners, ignoring the established principle that stricter rules are justified on campus than in society as a whole (*see, e.g.* Note, 81 *Harv. L. Rev.* 1045, 1130-31 (1968)), have based their legal argument to a substantial degree on court decisions which relate to non-academic situations. For example, at pages 12 and 13 of petitioners' brief it is argued that the university should be required to conform to the same constitutional norms as municipalities and other governmental agencies. In support of the argument, petitioners cite cases dealing with regulation of the public use of parks, state capitol grounds, municipal bus stations, libraries, shopping centers, and other areas dedicated to the general public use.

Informed commentators repeatedly have emphasized that a college or university is a unique community with a special

and limited purpose. It is not a microcosm of the larger community (*see e.g.*, Wilson, *Campus Freedom and Order,* 45 *Denver L. J.* 502, 503 (1968)). The rules of the university should be designed to promote its special function — discovering, developing and disseminating knowledge — in such a way as to benefit society at large. To this end the university has the power and obligation to preserve the property under its control for the use to which it is lawfully dedicated.

In a recent and frequently cited decision of the California Court of Appeal, *Goldberg v. Regents of the Univ. of California,* 248 Cal. App. 2d 867. (1967), the court stated:

> "Historically, the academic community has been unique in having its own standards, rewards and punishments. Its members have been allowed to go about their business of teaching and learning largely free of outside interference. To compel such a community to recognize and enforce precisely the same standards and penalties that prevail in the broader social community would serve neither the special needs and interests of the educational institutions, nor the ultimate advantages that society derives therefrom. Thus, in an academic community, greater freedoms and greater restrictions may prevail than in society at large, and the subtle fixing of these limits should, in a large measure, be left to the educational institution itself." (248 Cal. App. 2d at 880.)

The *Goldberg* decision upheld the action of university authorities in dismissing and suspending certain students for violation of university policy on student conduct. The conduct which prompted the disciplinary measures consisted of the loud and repeated use of objectionable language at one of the main entrances to the campus. There was no substantial evidence of actual disruption of classes, destruction of property, or other violence. The court's decision was based upon the rule that reasonable restrictions on the

freedoms of speech and assembly are valid when imposed by agencies which have an interest in maintaining good order and proper decorum. On page 879 of 248 Cal. App. 2d the court said:

> "Broadly stated, the function of the University is to impart learning and to advance the boundaries of knowledge. This carries with it the administrative responsibility to control and regulate that conduct and behavior of the students which tends to impede, obstruct or threaten the achievements of its educational goals. Thus, the University has the power to formulate and enforce rules of student conduct that are appropriate and necessary to the maintenance of order and propriety, considering the accepted norms of social behavior in the community, where such rules are reasonably necessary to further the University's educational goals."

II. The Courts Have Given College Administrators Broad Discretion to Manage Campus Affairs so as to Achieve the Educational Goals of the Institution

Although in some cases courts have seen fit to intervene in academic matters in order to protect the constitutional rights of individuals, the reported decisions consistently acknowledge that college officials are obligated to maintain the stability and decorum of the educational process, and must be allowed a very broad discretion in formulating and implementing policies and regulations. *See, e.g., Burnside v. Byars,* 363 F.2d 744 (5th Cir. 1966). The discussion which follows will survey some of the areas in which the courts have allowed public colleges a great degree of latitude and flexibility — greater than would ordinarily be permitted other governmental agencies.

A. USE OF COLLEGE FACILITIES AND RESOURCES

In *Sellers v. Regents of the Univ. of Calif.,* 432 F.2d 493 (9th Cir. 1970) *cert. denied* 401 U.S. 981 (1971) a student

organization was denied the use of a university facility because it was the university's opinion that the proposed activity would violate federal law. The court indicated that the denial of the use of the facility did not raise a free speech issue:

> "Here appellee in the exercise of its power to govern the university in a pursuit of a valid interest in that area, at most, has only incidentally infringed on First Amendment freedoms. Such being the case the regulation is not constitutionally infirm, *Cox v. Louisiana*, 379 U.S. 559, 85 S. Ct. 476, 13 L. Ed. 2d 487 (1965). Moreover, any chilling effect on this particular form of protest that might flow from a good faith enforcement of this regulation would not constitute an impermissible invasion of protected freedom [citation]."

In a somewhat similar case, *National Strike Inform. Center v. Brandeis Univ. of Waltham, Mass.*, 315 F. Supp. 928 (D. Mass. 1970) the court held the university had no legal obligation to subsidize a student association. The association had demanded that the university's computer, typewriters and similar equipment be made available to it. The court stated (p. 930):

> ". . . I find that a student association has no more right to demand that these facilities be made available to it than to demand that the President make his secretary available, or that he make campus maintenance trucks and other vehicular equipment available to serve the purposes of a student group."

B. PREVENTION OF DISRUPTIVE CONDUCT

The courts, without exception, have upheld the right of institutions of higher education to control and prevent disruption upon the campus. In *Esteban v. Central Missouri State College*, 415 F.2d 1077 (8th Cir. 1969) *cert. denied* 338 U.S. 965 (1970) the Court of Appeals for the Eighth Circuit said at page 1087:

> "It is obvious that where there is actual or potentially disruptive conduct, or disorder or disturbance by the petitioners, or interference with the work of the school or of the rights of other students, or threat or acts of violence on the school premises, or substantial disorder, then reasonable action by school authorities is constitutionally permitted."

Barker v. Hardway, 283 F. Supp. 228 (S.D.W.Va. 1968) *affirmed per curiam* 399 F.2d 638 (4th Cir. 1968) *cert. denied* 394 U.S. 905 (1969) involved campus protests which turned into violent demonstrations. The court said (at p. 238):

> "True it is that enrollment in school does not mean the student surrenders any of his constitutional rights. But by the same token, that fact does not give him the right to abuse and harass the administrators of the institution or engage in conduct detrimental to its wellbeing or which may tend to deprive other students of the right to a peaceful atmosphere in which to pursue their ambition for an education."

A college or university need not wait until it is torn by strife and disruption to take positive steps to protect itself. As was quoted by the court in *Zanders v. Louisiana State Board of Education,* 281 F. Supp. 747 (W.D.La. 1968):

> "The rights of freedom of assemblage and freedom of expression must not be exercised in such a way as to interfere with the operation of classrooms and laboratories, with the availability and use of libraries and other facilities, or with the conduct of the university's administrative responsibilities. Reasonable regulation to prevent such interference is clearly within the rule-making jurisdiction of the university."*

*Quoted from Sherry, *Governance of the University: Rules, Rights, and Responsibilities,* 54 CALIF.L.REV. 27 (1966).

C. PROHIBITION OF FRATERNITIES

The court in *Waugh v. Board of Trustees of the University of Mississippi,* 237 U.S. 589 (1915) held that a state-supported college may require a student who has been a member of a Greek letter fraternity to renounce his affiliation with such fraternity without infringing upon constitutional rights. See also *Hughes v. Caddo Parish School Board,* 57 F. Supp. 508 (W.D.La. 1944) *affirmed* 323 U.S. 685 (1945).

Webb v. State Univ. of New York, 125 F. Supp. 910 (N.D.N.Y. 1954) *appeal dismissed* 348 U.S. 867 (1954) found no encroachment upon the freedom of assembly or the right to equal protection of the law when the university banned social organizations with outside affiliations. An appeal to this Court was dismissed for lack of any substantial federal question. 348 U.S. 867 (1954).

D. PARIETAL RULES

In *Pratz v. Louisiana Polytechnic Institute,* 316 F. Supp. 872 (W.D.La. 1970) *affirmed* 401 U.S. 1004 (1971) a three-judge court upheld parietal regulations of a state-supported institution of higher education requiring students to live and eat their meals in facilities provided by the college. The court found no unlawful infringement of the right to travel, right of privacy, relationship with family or freedom of association.

Parietal rules of the sort approved in *Pratz* place a far greater restriction upon students than does a decision not to accord formal recognition to a student organization. Since both types of restrictions are designed to foster the desirable "educational environment", it is reasonable to conclude that, if parietal rules are constitutional, so is the action challenged by petitioners here.

In *Moore v. Student Affairs Comm. of Troy University,* 284 F. Supp. 725 (M.D.Ala. 1968) which dealt with the search of a student's dormitory room, the court stated:

> ". . . reasonable right of inspection is necessary to the institution's performance of . . . duty even though it may infringe on the outer boundaries of a dormitory student's Fourth Amendment rights . . ."

E. RULES REGULATING THE CONDUCT OF GROUP PROTESTS AND DEMONSTRATIONS

In *Sword v. Fox,* 446 F.2d 1091 (4th Cir. 1971) *cert. denied* ..... U.S. ..... (1971) 40 U.S. L.W. 3279 (U.S. Dec. 14, 1971) (No. 453) the court upheld rules restricting campus protests and demonstrations. The rules were challenged for vagueness and overbreadth. With reference to this challenge, the opinion states at page 1099:

> "This claim focuses upon the specificity required in college rules and regulations. . . . [T]here is a sharp divergence in the cases . . . but *all seem to agree that the same specificity is not required in college rules as is necessary in criminal statutes.* [Citations.]" (Emphasis added.)

III. A College May Impose Reasonable Standards and Conditions Upon the Granting of Recognition to Student Organizations

In *ACLU of Virginia v. Radford College,* 315 F. Supp. 893 (W.D.Va. 1970), a decision upon which petitioners place great reliance, the court said:

> "Student organizations do not have an unqualified right to be recognized by a college administration. College officials properly have wide discretion in operating the school and in determining what actions are most compatible with its educational objectives."

The *Radford College* decision holds that the college officials there did not have a clear set of standards by which to determine whether the activities of the ACLU were or were

not compatible with the goals of the institution (315 F. Supp. at p. 899). The court specifically distinguishes the present case[3] by pointing out that the ACLU, unlike the SDS, is not an organization which seeks to use violent or unlawful means to accomplish its goals (315 F. Supp. at p. 897).

Petitioners' reliance upon *Radford College*, thus is misplaced, even though the District Court decision in *Radford* appears to offer some support for petitioners' argument that the withholding of formal campus recognition is equivalent to a prohibition of "pure speech." It is submitted that this argument will not withstand critical analysis, because formal recognition of a student organization involves much more than the right to use college facilities for meetings and other activities which may be protected by the First Amendment. It also encompasses the privilege of using the college's name and the opportunity of receiving student body funds. Recognition in this context so closely identifies the organization with the educational institution that it is not only reasonable, but imperative, that the organization comply with the policies and rules of the institution.

Petitioners argue that this case is controlled by the Court's decision in *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969). It is not. The conduct involved in *Tinker* was found to be "closely akin to 'pure speech'" (393 U.S. at p. 503). The case did not involve an application for official sanction and approval by the school, but only a request that the students be permitted to express their views peacefully by wearing armbands. There was no reason at all to suspect that the petitioning students in *Tinker* might use school facilities to organize or carry out illegal or disruptive

3. At the time of the *Radford College* decision, the District Court opinion in the present case was current (*Healy v. James*, 311 F. Supp. 1275 (D.Conn. 1970).

actions. Finally, the *Tinker* situation was much less complex than that presented by the instant case because the school administrator in *Tinker* was faced only with a single request on behalf of a few students who fully disclosed their plans and purposes. He did not have to speculate as to what the future activities of the group would be, nor did he have to concern himself with the possibility that student funds or the school name would be used in connection with improper activities. By comparison, the college president whose action is challenged here had a much more difficult and complex problem before him than did the school administrator in *Tinker*. It is only reasonable that the administrator who faces the more difficult problem should be given a greater degree of discretion in resolving it.

Petitioners argue that the college should be required to recognize their organization because breaches of discipline are subject to punishment. Petitioners' brief characterizes the action taken by the president of the college as a "prior restraint" which they argue is wholly violative of the Constitution in the present context. Again, the pertinent court decisions do not support petitioners' argument.

In *Dunbar v. Governing Board of Grossmont Junior College Dist.*, 275 Cal. App. 2d 14 (1969) the court stated:

> "Undoubtedly the [college] has a broader discretion in controlling the speakers and the content of the speeches in a forum set up as part of the school's educational program than it would have had the forum been open to the public. This is so because First Amendment rights must be applied 'in light of the special characteristics of the school environment.'" (citing *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969)).

In *Dickey v. Alabama State Board of Education*, 273 F. Supp. 613 (M.D. Ala. 1967), *appeal dismissed as moot*, 402 F.2d 515 (5th Cir. 1968) the court stated:

"This court recognizes that the establishment of an educational program requires certain rules and regulations necessary for maintaining an orderly program and operating the institution in a manner conducive to learning. . . . Courts may only consider whether rules and regulations that are imposed by school authorities are a reasonable exercise of the power and discretion vested in those authorities. Regulations and rules which are necessary in maintaining order and discipline are always considered reasonable."

IV. The Freedoms of Speech and Association Are Not Absolute But Are Subject to Reasonable Restrictions for the Protection of Legitimate Public Interests

The rights of expression which are guaranteed by the First and Fourteenth Amendments are always subject to regulation as to the time, place, and manner of the exercise of such rights, so long as the regulation is reasonably related to a valid public purpose. *Estes v. Texas,* 381 U.S. 532, 539-40 (1965); *Commonwealth v. Stotland,* 214 Pa. Super. 35 (1969) *appeal dismissed for want of a substantial federal question* 398 U.S. 916 (1970).

A public institution of higher learning has an "inherent power" to maintain order on the campus and to exclude therefrom those who are detrimental to its well being. *McConnell v. Anderson,* 451 F.2d 193 (8th Cir. 1971) *petition for cert. filed,* 40 U.S. L.W. 3369 (U.S. Jan. 31, 1972) (No. 978); *Goldberg v. Regents of the Univ. of Calif.,* 248 Cal. App. 2d 867, 879 (1967). In enforcing such rules, of course, it is essential that the university carefully differentiate between those who are ". . . violent and heedless of the rights of others as they assert their cause and those whose concerns are no less burning but who seek to express themselves through peaceful, orderly means." (*Los Angeles Teachers' Union v. Los Angeles City Board of Education,*

71 Cal. 2d 551, 565 (1969)). Unless the action of the college is patently arbitrary, however, the courts should permit the college administrators a broad discretion in making such judgments.

In *Sellers v. The Regents of the Univ. of Calif.*, 432 F.2d 493 (9th Cir. 1970) *cert. denied* 401 U.S. 981 (1971), the court affirmed a denial of injunctive and declaratory relief to a group of students representing a campus organization. The students contended the university had unlawfully refused them permission to use a campus building for purposes of holding an assembly to demonstrate support for persons who have refused induction into the armed services. The application for permission to hold the assembly expressly disclaimed any intention to violate the law. (432 F.2d at p. 496.) The university, acting upon advice of counsel, had denied the application on the ground that it was foreseeable that a violation of 50 U.S.C. § 462(a) would occur. Section 462(a) makes it unlawful to counsel, aid or abet another to refuse or evade service in the armed forces.

In upholding the action of the university, the Court of Appeals stated:

> "... Beyond doubt, appellee in its role as administrator of the University system has a vital interest in preventing illegal activity on the campus. ...
>
> "....
>
> "... We express no opinion on the actual applicability of § 462(a) or on its constitutionality. In arriving at this conclusion, we reject the appellants' contention that the standards for immediate *de novo* judicial review required in censorship of 'obscenity' cases should here apply. [Citations] It is our considered opinion that *the judicial function, as applied to those in charge of governing the campuses of our universities, should be far less inclusive* than the role played by the courts in review of state censorship of an 'obscenity,' a

censorship that reaches into private homes and businesses." (432 F.2d at p. 499.) (Emphasis added.)

In *Schwartz v. Schuker*, 298 F. Supp. 238 (E.D.N.Y. 1969), it was held there was no unlawful infringement of the right of free speech where a high school student was suspended for violating the principal's instructions not to distribute copies of an off campus newspaper entitled "High School Free Press" which contained criticisms of the school administration. The court stated that the incidental infringement of First Amendment rights was justified by the ". . . duty and obligation of the state to educate students in an orderly and decent manner. . . ." 298 F. Supp. at p. 242.

These and the other cases cited herein establish beyond dispute that the state has an important interest and an obligation to educate its students in an orderly manner and to take reasonable precautions designed to preserve the necessary climate for teaching and learning.

V. The Interest of Petitioners in Obtaining Official Recognition Must Be Balanced Against the Obligation of the State to Educate Its Students in an Orderly and Disciplined Manner

When it is claimed that enforcement of a college or university regulation will infringe rights of free expression, the proper test to be applied is one of balancing the private interest in free expression against the public interest in furthering the goals of public higher education. *Scoville v. Board of Ed. of Joliet Township H.S. Dist.*, 425 F.2d 10, 14 (7th Cir. 1970) *cert. denied* 400 U.S. 826 (1970); *Burnside v. Byars*, 363 F.2d 744, 748 (5th Cir. 1966). While the freedoms of expression and of association are highly valued as fundamental to our society, these rights may be subjected to direct regulation if there is a compelling governmental interest which overrides the interest of the individual in the activities which are restricted. *See Common-*

wealth v. Stotland, 214 Pa. Super. 35 (1969) *appeal dismissed for want of a substantial federal question* 398 U.S. 916 (1970).

That the state's interest in protecting the integrity of its educational system qualifies as a "compelling" interest cannot be disputed. *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 507 (1968); *Schwartz v. Schuker*, 298 F. Supp. 238, 242 (E.D.N.Y. 1969); *Goldberg v. Regents of the Univ. of Calif.*, 248 Cal. App. 2d 867, 879 (1967).

In *Konigsberg v. State Bar of California*, 366 U.S. 36, (1961), this Court stated:

> "... general regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved." (366 U.S. at pp. 50-51.)

The compelling state interest in protecting the educational system was not the only interest which the college sought to protect by the action which petitioners challenge. Also involved was the fundamental right of the other students of the college to be free from interference with their freedoms of expression. The discouragement of violence and of other methods which interfere with the rights of others is a legitimate goal. The college obviously is justified in exercising extraordinary precaution when there is *any* substantial danger of the violent suppression of free expression by those who will not hesitate to use such methods to achieve their purposes.

The action of the college here was not an absolute prohibition of speech or assembly. It was a minimal restriction which clearly qualifies as a "time, place and manner" rule.

Reasonable rules regulating the time, place, and manner of speech and assembly do not violate the constitution. *Cox v. Louisiana*, 379 U.S. 536, 559 (1965); *Adderley v. Florida*, 385 U.S. 39 (1966); *Sellers v. Regents of the Univ. of Calif.*, 432 F.2d 493 (9th Cir. 1970), *cert. denied*, 401 U.S. 981 (1971).

Since the college's action clearly was designed to protect a "compelling" public interest, and since the restriction imposed is of the type which is constitutionally valid under proper circumstances, the inquiry turns to the nature and substantiality of the private interest which is to be weighed in the balance.

As noted, the petitioners have been deprived of nothing more than the benefit of college facilities, student body funds, and the use of the college's name in connection with the activities of their organization.

On balance, the public interest in preserving an atmosphere conducive to learning manifestly outweighs any impairment of private rights or interests which has resulted from the college's action.

The only question which remains is whether the action taken was reasonably related to the protection of the public interest involved. *Cox v. Louisiana, supra.* For reasons which are explained in the final sections of this brief, it is submitted that such a reasonable relationship has been amply demonstrated by the respondents.

VI. The Rules and Policies Which the College Seeks to Enforce Are Reasonable

The action which is challenged by petitioners was based upon the "Statement On Rights, Freedoms and Responsibilities of Students" which is reproduced in the appendix to the Court of Appeals decision (445 F.2d 1122 at p. 1132). In pertinent part, the statement provides as follows:

"If the individual rights of a student are to be preserved, certain standards must be maintained in student affairs.

"A. Care shall be taken in the establishment and organization of campus groups so that the basic rights, freedoms and responsibilities of students will be preserved.

"B. Student organizations shall submit a clear statement of purpose. . . .

". . .

"E. College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinions publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others." (At p. 1135.)

The petitioners do not appear to challenge the reasonableness of the rules contained in the above statement. They apparently contend that the action taken by the president of the college was not necessary to the effectuation of the stated rules and policies. It is submitted that the means chosen by the president to enforce such rules and policies was well within the limits of his lawful discretion.

Events of the past few years on college campuses across the country have demonstrated that there exists a small minority of students who not only advocate but actively practice disruptive and violent tactics designed to interfere with the rights of others and with the free interchange of ideas. In a resolution adopted by the American Association of University Professors at its Council Meeting of October 29, 1967, it is stated:

> "Action by individuals or groups to prevent speakers invited to the campus from speaking, to disrupt the operation of the institution in the course of demonstrations, or to obstruct and restrain other members of the academic community and the campus visitors by physical force is destructive of the pursuit of learning and of a free society. *All components of the academic community are under a strong obligation to protect its processes from these tactics.*"*

As stated by the late Mr. Justice Black in his dissent in the *Tinker* case:

> "Many . . . student groups . . . have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate the public school system than do their parents, teachers, and the elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands . . . to exercise their political pressures. . . . It is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools. . . ." (393 U.S. at p. 525.)

Under the rule of the *Tinker* decision, a school may constitutionally prohibit an activity if there are circumstances present from which the school officials reasonably could forecast substantial disruption or interference with school activities. 393 U.S. at p. 513.

Sellers v. Regents of the Univ. of Calif., supra, decided less than two years after this Court's decision in *Tinker,* holds that a university may withhold permission to use its

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*Quoted in Wilson, *Campus Freedom and Order,* 45 Denver L.J. 502, 504 (1968). (Emphasis added).

facilities upon the basis of a reasonable belief that the activity to be conducted would be in violation of law.

If there is reason to believe that the tenets and purposes of an organization sanction the use of violent tactics and other unlawful forms of protest, it obviously is reasonable to infer that the organization may use college facilities to violate the law and to disrupt the educational process, or to plan and organize such unlawful activities. Where the organization applying for recognition is a "local chapter" of a national organization which has openly employed unlawful means to achieve its ends, a college official is clearly justified in exercising extraordinary caution before granting official recognition to the organization.

Petitioners have argued that the facts do not establish a "clear and present danger" of violence or disruption, and therefore there is no lawful justification for the college's action. The "clear and present danger" doctrine is not applicable here. *See Cox v. Louisiana, supra,* 379 U.S. 559, 565-66 (1964). The test to be applied is whether there is an overriding public interest which is served by the rule sought to be enforced, not whether there is a clear and present danger to the public safety. It is sufficient that the public officials involved can reasonably find a likelihood that the prohibited activity will be detrimental to an important public interest such as the administration of justice (*Adderley v. Florida,* 385 U.S. 39 (1966); *Estes v. Texas,* 381 U.S. 532 (1965) or the preservation of the educational atmosphere (*Schwartz v. Schuker,* 298 F. Supp. 238 (E.D.N.Y. 1969)), or that public property will be used to violate a valid law (*Sellers v. Regents of the University of California,* 432 F.2d 493 (9th Cir. 1970) *cert. denied* 401 U.S. 981 (1971)).

If it is found that there is a reasonable likelihood that college facilities will be used for purposes of organizing and planning illegal activities, it is immaterial that such

conduct may be "intertwined with expression and association." (*Cox v. Louisiana, supra* at p. 563.)

VII. It Is Not Unreasonable to Require That a Student Organization Seeking Recognition Fully Disclose Its Purposes and Plans

Petitioners appear to argue that the college acted in an unconstitutional manner when it placed the burden upon them to demonstrate that official recognition of their organization would be consistent with the legitimate interests and policies of the college. It is submitted that the court below was correct in its ruling that the petitioners had the burden of demonstrating compliance with the standards established by the college (*Healy v. James*, 455 F.2d 1122, 1131 (2d Cir. 1971)). It would be unreasonable to place the burden of showing non-compliance upon the college administration.

College officials today face overwhelming responsibilities in resolving the day-to-day problems and the frequent crises which inevitably arise on college campuses. The college president not only is responsible for the continuing operation of the institution, he must also foster and maintain good relationships with the faculty, the students, the governing board, and the outside community. If he fails to retain the confidence of any one of these groups, his effectiveness is seriously impaired, and the continued functioning of the educational process may be jeopardized. It is apparent, therefore, that no college administrator should have thrust upon him any additional burdens or responsibilities in the absence of a clear showing of necessity.

In order to exercise his legitimate authority to supervise and control the educational process, the college administrator must have the relevant facts regarding the purposes, plans, goals, and motives of a student organization which seeks to receive official recognition. It is not unreasonable

to require that the students who seek the benefit of such recognition provide a statement of such relevant facts to the best of their ability.

In *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961) it was held that a state constitutionally may deny admission to the bar to an applicant who refuses to answer questions having a substantial relevance to his qualifications. The petitioner in *Konigsberg*, before a hearing board of the State Bar, had stated unequivocally his disbelief in violent overthrow of the government and had stated that he had never knowingly been a member of any organization which advocated such action. He refused, however, to answer any questions relating to his alleged membership in the Communist Party. The board declined to certify him for admission on the ground that his refusal to answer had obstructed a full investigation into his qualifications and good moral character. The California Supreme Court declined to review the decision of the board. 52 Cal. 2d 769. This court affirmed, saying at 366 U.S. 46:

> "It is no answer to say that petitioner has made out a prima facie case of qualifications, for this is precisely the posture of a proceeding in which the Committee's right to examine and cross-examine become significant. . . . Petitioner could no more insist that his prima facie case makes improper further questioning of him than he could insist that such circumstance made improper the introduction of other forms of rebutting evidence."

Petitioners have suggested that recognition of their organization should be automatically granted, and then, if misuse of college facilities occurs, the college could take formal action of a disciplinary nature. It is submitted this would place an undue burden upon the college, because the college would have the burden of proving that violations had occurred. As discussed above, there are compelling

reasons to avoid placing such a burden on the college administration. On the other hand, no persuasive reasons appear in support of petitioner's contention that they should not be required to answer reasonable inquiries into the purposes and objectives of their organization in sufficient detail to enable the college to make a determination whether the organization will contribute to or materially detract from the educational process. *See also Law Students Research Council v. Wadmond*, 401 U.S. 154 (1971).

The cases cited by petitioners at page 20 of their Brief in support of their argument for placing the burden of justification upon the college president are not applicable. As discussed previously, criminal statutes applicable to society at large do not provide a valid analogy to campus rules. *Sellers v. Regents of the University of California*, 432 F.2d 493, 499 (9th Cir. 1970) *cert. denied* 401 U.S. 981 (1971).

CONCLUSION

For the reasons set out above, the decision below should be affirmed.

Dated:

Respectfully submitted,

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